**Oliver Insulating Company, Inc. *and* International Association of Heat and Frost Insulators and Asbestos Workers, Local 84, AFL–CIO.** Case 8–CA–23347

December 4, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The principal issues in this case are whether the administrative law judge correctly determined that the Union's charges were timely filed under Section 10(b) of the Act, and whether the Respondent violated Section 8(a)(5) by failing to supply requested information and failing to process grievances.

On February 6, 1992, Administrative Law Judge David L. Evans issued the attached decision. The Respondent filed exceptions and a supporting brief. The Charging Party (the Union) filed cross-exceptions and a memorandum in opposition to the Respondent's exceptions. The General Counsel filed an answering brief to the exceptions and cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs, and has decided to affirm the judge's rulings, findings, and conclusions as modified, and to adopt the recommended Order.

We affirm the judge's finding that the allegations of the complaint, as amended at trial, are supported by charges that were filed within the limitations period of Section 10(b) of the Act. We do so for the reasons set forth below.

The Respondent and the Union were parties to two 8(f) agreements. The Master Agreement expired, pursuant to notice, on June 30, 1990. The Maintenance Agreement expired, pursuant to notice, on September 24, 1990.

1. We deal first with the question whether allegations concerning the Respondent's refusal to supply requested information relating to grievances filed under the Master Agreement are supported by a timely charge. On August 31, 1990, the Union made a request for information concerning a grievance filed on June 8, 1990, under the Master Agreement. The General Counsel contends that the failure to supply this information violated Section 8(a)(5). The Respondent argues that, on June 29, 1990, it clearly and unequivocally told the Union that it was repudiating its relationship with the Union insofar as the Master contract unit was concerned.[1] Thus, according to the Respondent, the Union knew, or should have known, on that date that the information would not be supplied. Therefore, the argument runs, the charge of January 25, 1991, was untimely.

The judge found that the Respondent's June 29, 1990 letter to the Union was in fact a repudiation letter that constituted clear and unequivocal notice to the Union that the Respondent would not respond to any subsequent requests for information under the Master Agreement. In his view, this was an ''anticipatory refusal'' to supply any information that might be later requested. The judge reasoned that, in these circumstances, the August 31, 1990 request for information is to be considered as denied as soon as it was made. Thus, he concluded that the charge was timely with respect to the denial of the August 31 request.

The General Counsel and the Charging Party contend that the June 29, 1990 letter did not constitute notice to the Union that the Respondent would not respond to subsequent requests for information. We agree.

Unlike the judge, we cannot find that the Respondent's June 29, 1990 letter clearly communicated that the Respondent would not furnish information under the expiring Master contract. While the letter clearly repudiates any obligation to bargain for a successor or future agreement, it is silent as to its obligation to process and resolve grievances which arose under the Master contract before its expiration. Further, there is nothing in the letter to indicate that it would not provide the requested information necessary to process such grievances. Accordingly, since the Respondent did not communicate to the Union that it would not meet its bargaining obligation under the expired contract, we do not adopt the judge's finding that the letter constituted an anticipatory refusal to furnish the requested information.

Nor was Respondent's letter of July 20, 1990, a clear and unmistakable refusal to supply information under the Master Agreement. The letter was ostensibly in response to a July 13, 1990 grievance filed under the Maintenance Agreement, not the Master Agreement. Further, the letter makes a confusing reference to Local 44. There is no record evidence regarding Local 44. Both the Master Agreement and the Maintenance Agreement were with Local 84. The letter also says that the information could be supplied if further explanation of the request was given. In sum, the letter is not a clear and unmistakable rejection of the August 31, 1990 request for information.

The same reasoning applies to the January 30, 1991 request for information relevant to the grievances filed on June 8 and 29, 1990, under the Master contract. Thus, under this reasoning, the Respondent's letter of June 29, 1990, was neither an anticipatory refusal to supply this information nor a clear refusal to do so.

[1] At this time, the Respondent did not repudiate the relationship insofar as the Maintenance contract unit was concerned.

In sum, at no time prior to July 25, 1990 (the start of the 10(b) period) did the Respondent provide clear and unequivocal notice that it would not respond to the Union's request for information necessary to process the pending grievances under the Master Agreement.

It is well settled that the 10(b) period commences only when a party has clear and unequivocal notice of a violation of the Act. *Strick Corp*., 241 NLRB 210 fn. 1 (1979). Further, as is the case with the 10(b) defense generally, the burden of showing that the charging party was on clear and unequivocal notice of the violation rests on the respondent. Since the Respondent has not met this burden, we find that the charge filed on January 25, 1991, was timely as to the requests for information, dated August 31, 1990, and January 30, 1991.

2. Applying those same principles, we next consider whether, prior to July 25, 1990, when the 10(b) period commenced, the Union has sufficient notice that the Respondent would refuse to supply requested information concerning a grievance under the Maintenance Agreement, which was described in a letter dated July 13, 1990, from the Union to the Respondent. As explained above, the Respondent's June 29, 1990 letter did not contain a clear refusal to supply any information concerning precontract-expiration grievances. Since the June 29 letter stated that the Respondent *would* continue to honor the Maintenance Agreement for its term (ending Sept. 24, 1990), that letter a fortiori did not give the Union clear notice that the Respondent would supply no information concerning the July 13 grievance. The Respondent's July 20 letter, with its confusing references to Local 44, also failed to supply such notice. Although it stated the Respondent's refusal to meet over the grievance or supply information at that point, the letter suggested that information might be forthcoming if the Union further explained its request. The record shows no further communications relating to this matter prior to July 25, 1990, so the charge filed January 25, 1991, is timely with respect to the alleged refusal to supply information relating to the Maintenance Agreement grievance.

3. We also find that the Respondent did not, prior to the commencement of the 10(b) period, give clear and unequivocal notice of a refusal to process the June 8 and 29 Master Agreement grievances or the July 13 Maintenance Agreement grievance. Nothing in the Respondent's communications prior to July 25, 1990, constituted adequate notice that the Respondent not only declined to bargain for new agreements after the Master Agreement and Maintenance Agreement expired, but also was refusing to satisfy its statutory obligation to bargain over grievances that, notwithstanding the date on which they were filed, arose under the expiring agreements.[2] Therefore, the grievance processing allegations are timely if they are covered by the January 25 charge.

The Respondent also contends that the January 25 charge did not cover the refusal to process grievances.

The January 25 charge alleges, inter alia, that the Respondent violated the Act:

> 1. By failing to produce requested information necessary to the processing of a grievance; and
>
> . . . .
>
> 3. By continuing to refuse to recognize and bargain with the Union as the exclusive bargaining representative.

We find that this charge is sufficient to cover the refusal to process grievances, since the charge refers to the Respondent's failure to bargain, and grievance processing is an aspect of bargaining.[3] Further, the information requests are inextricably tied to the grievances. In any event, we agree with the judge, for the reasons stated by him, that the amended charge of March 29, 1991,[4] which explicitly covers the failure to process grievances, is closely related to the timely filed allegations in the original charge. Therefore, we find that the allegations of the complaint concerning a failure to process grievances are supported by charges that were timely filed under Section 10(b).[5]

4. With respect to the merits of this case, we note that, under *Deklewa*,[6] an employer has an 8(a)(5) obligation to honor the terms of an 8(f) contract. This principle would extend to the grievance provisions of such a contract. Where, as here, the grievances are filed during the term of the 8(f) contract and relate to disputes arising under that contract, we would apply the *Deklewa* principle to require that the Employer process the grievances even after the expiration of the contract. *Jervis B. Webb Co*., supra. Further, inasmuch as there is a *Deklewa* duty to process these grievances, we would construe that duty to include the obligation to supply information relevant to those grievances, even if the information request occurs after the expiration of the 8(f) contract.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Oliver Insulating Com-

[2] See *Jervis B. Webb Co*., 302 NLRB 316 (1991).

[3] *Indiana & Michigan Electric Co*., 284 NLRB 53 (1987).

[4] The judge inadvertently refers to ''the March 21 amendment'' several times in his decision. The correct date is March 29.

[5] The allegations with respect to the failure to honor the January 30, 1991 request for arbitration are simply another aspect of the failure to process the grievances and are supported by both the original and amended charge. We also agree with the judge that the trial amendment relating to the Respondent's refusal to supply information pursuant to the May 8, 1991 request is supported by both the original and amended charges.

[6] *John Deklewa & Sons*, 282 NLRB 1375 (1987).

pany, Inc., Ashland, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*Mark Carissimi, Esq*., for the General Counsel.
*Alan G. Ross, Esq. (Ross, Brittain & Schonberg Co., L.P.A.)*, of Cleveland, Ohio, for the Respondent.
*Randall Vehar* and *Ronald G. Macala, Esqs*., of Canton, Ohio, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge. This matter under the National Labor Act (the Act) was tried before me in Cleveland, Ohio, on August 27, 1991. The original charge was filed by International Association of Heat and Frost Insulators and Asbestos Workers, Local 84, AFL–CIO (the Union) against Oliver Insulating Company, Inc. (the Respondent), on January 25, 1991. An amendment to the charge was filed on March 29, 1991. The complaint was issued by General Counsel on April 30, 1991, and it was amended at trial. Respondent duly answered the complaint, admitting jurisdiction of this matter before the National Labor Relations Board (the Board) but denying the commission of any unfair labor practices and denying that the allegations of the complaint are supported by charges filed within the 6-month limitations period of Section 10(b) of the Act.

On the testimony and exhibits entered at trial, including my observation of the demeanor of the witnesses, and on the briefs that have been filed by all parties, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

Respondent is a corporation that maintains an office and place of business in Ashland, Ohio, where it is engaged in the construction industry as a contractor for insulating, mechanical, and asbestos abatement services. Annually, in the course and conduct of that business, Respondent purchases and receives at its Ashland facility products, goods, and materials valued in excess of $50,000 directly from suppliers located at points outside Ohio.

Therefore, Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

##### A. *The Charge and Complaint*

The January 25, 1991 charge alleges as violations of Section 8(a)(5) and (1) of the Act:

> Since on or about July 28, 1990, and continuing at all times since then, the above-named employer has violated [the Act] by the following and other acts:
>
> 1. By failing to produce requested information necessary to the processing of a grievance;
>
> 2. By diverting bargaining unit work to a related company and/or to an alter ego, single employer, and/or joint employer without prior notice and/or bargaining; and
>
> 3. By continuing to refuse to recognize and bargain with the exclusive bargaining representative.

The March 29, 1991 amendment repeats the above-quoted language, and it adds as a fourth specified violation of Section 8(a)(5):

> 4. By failing to process grievances.

Both the original and amended charges conclude:

> By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act[.]

The complaint alleges that for many years the Union has been recognized by Respondent as the exclusive bargaining representative of its mechanics and apprentices. The complaint further alleges, at paragraph 6, that the last contract (the Master Agreement) between the parties was effective from June 30, 1987, through June 30, 1991. It further alleges:

> 7. (A) The collective bargaining agreement referred to in Paragraph 6 was a pre-hire agreement as permitted by Section 8(f) of the Act.
>
> (B) In addition to the collective bargaining agreement referred in Paragraph 6, the Respondent and the Union were also signatory to a Maintenance Agreement which was due to expire September 24, 1990.
>
> 8. (A) On or about June 8, 1990, the Union filed a grievance alleging that Respondent was subcontracting bargaining unit work in violation of the terms of the collective bargaining agreement referred to in Paragraph 6.
>
> (B) On or about June 29, 1990, the Union filed a grievance alleging that the Respondent failed to provide adequate notice of layoff and failed to follow proper referral procedures in violation of the collective bargaining agreement referred to in Paragraph 6.
>
> (C) On or about July 13, 1990, the Union filed a grievance alleging that Respondent had violated the terms of the Maintenance Agreement referred to in Paragraph 7(B).
>
> (D) Since on or about September 21, 1990, Respondent has refused, and continues to refuse, to process the grievances referred to in subparagraphs (A), (B) and (C).
>
> 9. (A) Since on or about August 31, 1990, the Union, by letter, has requested Respondent to furnish the Union with information on any project performed by Respondent or an allegedly related company for the prior two year period.
>
> (B) The information requested by the Union, as described above in subparagraph (A) is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the Unit.

> (C) Since on or about September 21, 1990, Respondent has failed and refused to furnish the Union the information requested by it as described above in subparagraph (A).

At trial, paragraph 9(A) was amended to add the following:

> Since on or about May 8, 1991, the Union, by letter, has requested Respondent to furnish the Union with information regarding a list of all jobs, dates worked and hours where Gary Oliver performed work normally performed by the Union; all information regarding the use of Oliver Insulation equipment that Gary Oliver & Company may have leased, borrowed or bought from your company; a list of contracts, if any, that Oliver Insulation entered into with Gary Oliver & Company. The Union further requested by the same letter on that date that the Respondent furnish a list of jobs, dates and hours worked for one employee as it relates to the Union's June 29, 1990 grievance; and that the Respondent furnish a list of employees, dates, hours worked and wages paid on the Westfield Center project.

Paragraph 9(C) was amended to incorporate this allegation, as well.

### B. *The Facts*

Through a succession of contracts permitted by Section 8(f) of the Act, Respondent and the Union had a collective-bargaining relationship for 15 years before the events of this case. For a time these contracts were the product of negotiations between the Union and the Master Insulators Association of Akron, Ohio (the Association), of which Respondent was a member. There are two types of collective-bargaining agreements in the industry: a Master Agreement which covers both new construction and repair/renovation work, and a Maintenance Agreement which is limited to repair/renovation work and provides employers with more favorable terms for such work.

The last Association Master Agreement which bound the parties was effective by its terms from July 1, 1987, through June 30, 1990. The Master Agreement recites that it would be renewed unless notice is given 90 days prior to the stated termination date. At article XVIII, ''Maintenance Agreement,'' the Master Agreement further provides that any subsequently negotiated Maintenance Agreement between the parties will be modeled after the International's Maintenance Agreement and:

> The Employers and the Union must agree within the terms of this [Master] Agreement before said [Maintenance] Agreement can be put into effect.

On December 19, 1988, Respondent (separately from the Association) and the Union executed such a Maintenance Agreement (the Maintenance Agreement). The Maintenance Agreement has no definite termination date, but it provides for termination on 90 days' written notice. The Maintenance Agreement expressly states that it does not apply to new construction (which was to come under the parties' Master Agreement), and further:

> This Agreement shall have application only to work location[s] agreed upon between the Company and the Union.

Both agreements prohibit supervisors from doing bargaining unit work, prohibit subcontracting, and require employment of union-represented employees after the fifth day of a project. The Master Agreement contains provisions for a grievance procedure and binding arbitration. The Maintenance Agreement incorporates those procedures by reference. Grievances are defined as any dispute arising under the contract. The remainder of the grievance procedure is

> In case any dispute arises, verbal and written notice must be given to the alleged violating party. In the event the dispute is not re solved, it shall be referred to binding arbitration.

That is, there are no stated time limits for the filing of grievances or the answering of grievances, no specified steps to the grievance procedure, and no stated time limit for referral of a matter to arbitration. The arbitration clause provides for joint selection of arbitrators through the Federal Mediation and Conciliation Service, but adds: ''If either party refuses or fails to join in such selection, the other party may name the arbitrator.''

Robert E. Oliver is the president of Respondent. For some time before 1989, one of Robert's sons, Gary, operated Gary Oliver and Company, Inc. (the Gary Oliver Company), a concern that did asbestos abatement work. Asbestos abatement work, when done by Respondent, fell under the parties' agreements. The Gary Oliver Company had no agreement with the Union. In early 1989, Robert Oliver and Jim Huddleston, union business agent, had a telephone conversation in which Robert Oliver told Huddleston that Gary was no longer operating his own business and would, thereafter, be a superintendent for Respondent, and he would be supervising Respondent's asbestos abatement work.

Late in 1989, Huddleston met Gary on a job in Galion, Ohio. No union-represented employees were on the job and Huddleston asked Gary why. Gary replied that the job was being performed by the (supposedly defunct) Gary Oliver Company. Huddleston contacted Robert Oliver and asked for a meeting over the matter; Robert Oliver, by letter, told Huddleston that Gary had been mistaken and that Respondent was performing the job in question and that the Union would be contacted, presumably about getting union-represented employees on the job. Apparently that happened, because nothing more was said about the Galion job.

On March 22, 1990, Respondent sent the Union two letters. In the first, Respondent announces that it is revoking the authority of the Association to bargain on its behalf, that it would not be a party to agreements subsequently negotiated by the Association, and that it would individually bargain with the Union thereafter. That first letter concludes that: ''Of course, Oliver Insulating Company will continue to adhere to the terms of the current collective bargaining agreement.'' The second letter announces that Respondent is terminating the Master Agreement at the end of its term, June 30.

On June 8, 1990,[1] Huddleston wrote Respondent that the Union had ''new evidence'' that Respondent and the Gary Oliver Company are ''inter-related and a violation of our Collective Bargaining Agreement with you has occurred on several occasions.'' The letter concludes that a grievance under the contract exists, that Huddleston would like to meet on the matter, and that Oliver should call him.

On June 26, Oliver sent Huddleston a notice that Respondent was terminating the Maintenance Agreement as of September 24 pursuant to the 90-day notice provision of that agreement.

On June 28, after an exchange of letters, Huddleston and Alan Ross, Respondent's attorney, met to discuss the June 8 grievance. Ross asked what evidence the Union already possessed that the Gary Oliver Company was doing work on behalf of Respondent. Huddleston replied that the Union was still investigating the matter and would send Ross its information later. Huddleston did not ask Ross for any information at that time.

On June 29, by letter and telephone call, Huddleston informed Oliver that a second grievance existed between the parties. The letter recites that Respondent had failed to give the Union 48 hours' notice when last it laid off employee Mike Conway, that Respondent had placed employee Pat Goggins on work not approved by the Union, and that, in a manner not specified, Respondent had violated the contractual provisions for an exclusive referral procedure. No dates for the alleged contractual violations were indicated.

Also on June 29, Oliver wrote Huddleston that on the June 30 expiration of the Master Agreement, Respondent repudiated ''any obligation to recognize or bargain with Local 84.'' The letter concludes:

> At the present time, Oliver Insulating Company has other collective bargaining agreements in effect which involve other local unions. Those agreements include, but are not limited to, agreements with Local 203 [a sister Local whose contract rates would sometimes apply to work of employees represented by the Union] and the Maintenance Agreement. To the extent that Oliver Insulating Company is performing any work covered by either of those agreements within the geographic jurisdiction of Local 84, Oliver Insulating Company will abide by those agreements for so long as they are in full force and effect.

On July 13, Huddleston wrote Oliver that a third grievance between the parties existed. The letter claimed that Respondent had failed to comply with the Maintenance Agreement for renovation work at ''the Westfield Center Clubhouse.'' The letter does not say in what regard Respondent might have failed to comply with the Maintenance Agreement at that jobsite. The letter makes the Union's first informational request:

> If you have any other work that would fall under the terms of [the Maintenance Agreement], we would appreciate your listing the dates worked, numbers of hours, and the location of the project.

This was the Union's first request for information that is involved in this case.

On July 20, Ross wrote Huddleston that Respondent had no duty to bargain with the Union, ''because no bargaining unit exists,'' and that Respondent would not meet with the Union over the July 13 (Maintenance Agreement) grievance. The letter further declines to furnish the requested information, but holds out the possibility that some information may be furnished in the future if the Union will give a satisfactory explanation of why it is being requested.[2]

On July 30, and apparently in response to the request that Ross made of Huddleston at their June 28 meeting on the June 8 grievance, Huddleston wrote Ross:

> As per your request, the following listed facilities appear to be projects performed by Gary Oliver Insulations [sic] while Gary was acting as Superintendent for Oliver Insulations [sic].

Then Huddleston lists 10 such projects, states that there are probably more, and states that the Union's investigation of the matter is continuing. The letter did not ask for any information from Respondent.

On August 31, Huddleston wrote Respondent again referring to the June 8 grievance and recites 37 jobs by Respondent or the Gary Oliver Company which the Union considered to be the subject of the June 8 grievance. The letter further makes the Union's second request for information that is involved in this case.

> We also respectfully request information on any other project performed by Oliver Insulation or Gary Oliver & Company in the past two (2) years. Failure to provide this information, so [that] we may better process our grievance, may lead to an unfair labor practice [charge].

The letter concludes with a request to meet ''to resolve this issue.''

Respondent did not reply.

On September 21, Oliver wrote Huddleston that, as of September 24, after the Maintenance Agreement was terminated, Respondent repudiated any relationship with the Union.

As noted, the original charge was filed on January 25.

On January 30, Huddleston wrote Respondent that it was referring the June 8 and 29 Master Agreement grievances (but not the July 13 Maintenance Agreement grievance) to arbitration and further made the Union's third request for information that is involved in this case.

> In order to better prepare for our grievance[s], we are once again requesting that you provide us with a list of all jobs [on] which Gary Oliver or any other person [in] your employ, other than bargaining unit workers, performed duties that [have] contractually and historically been performed by members of Asbestos Workers Local 84.[3]

[1] All subsequent dates are between June 8, 1990, and May 8, 1991, unless otherwise indicated.

[2] This is the only construction of the letter which I can make. Actually, the letter contains references to other locals of the Union which are inexplicable on this record.

[3] Some extraneous quotation marks are omitted.

Also on January 30, Huddleston notified FMCS of the dispute and asked for submission of a panel of arbitrators, listing as the topics in issue the subjects of the June 8 and 29 grievances.

In neither of Huddleston's January 30 communications was the July 13 Maintenance Agreement grievance mentioned.

On March 1, Ross wrote Huddleston that Respondent denied that there was a current bargaining relationship between the parties (although Huddleston had not stated that there was), objected to the Union's unilateral submission of the request for arbitrators, and stated:

> In view of the foregoing, should you wish to request FMCS for a panel of arbitrators, Oliver Insulating will participate in a joint submittal for a panel that can then be properly assembled and served on both the Company and Local 84 simultaneously.
>
> Should you have any further requests or desire any other information, please do not hesitate to correspond with me directly.

As noted, the amended charge was filed on March 29.

On May 8, by letter of that date, Huddleston made the fourth union request for information, as specified in the trial amendment to the complaint which is quoted above. In his letter, Huddleston stated that he needed the information to prepare for arbitration of the issues raised in all of the three grievances it had filed.

Respondent never produced any of the information requested by the Union, and Respondent did not comply with the Union's demands for arbitration.[4]

### C. *Analysis and Conclusions*

#### 1. The 10(b) issues

Section 10(b) of the Act provides that ''no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board.'' Respondent argues that all allegations of the complaint are barred by this provision of the Act.

The complaint, as amended at trial, alleges that Respondent has, in violation of Section 8(a)(5), refused to process (or entertain) grievances and has refused to provide information relevant to those grievances since September 21. (I find that Respondent's refusals began, as anticipatory refusals, on June 29, but that finding does not affect the ultimate result.)

The Union filed three grievances: (1) the June 8 grievance under the Master Agreement alleging that Respondent and the Gary Oliver Company were acting as ''inter-related'' companies; (2) the June 29 grievance under the Master Agreement relating to a layoff of employee Goggins, the placement of employee Conway on an unapproved job, and an alleged failure to abide by the exclusive referral procedures; and (3) the July 13 grievance under the Maintenance Agreement relating to alleged violations at the Westfield Center Clubhouse jobsite. Respondent contends that the limitations period of Section 10(b) begins to run on any alleged unlawful refusal to entertain grievances, or any alleged unlawful refusal to furnish information necessary to process grievances, as of the date that any such grievance is filed. Although I asked for authority of this proposition at the hearing, Respondent suggests none on brief.

Respondent acknowledges that the grievances involved were filed within the dates covered by the relevant contracts. Respondent argues, however, that a failure of the Board to create a time limit on requests for processing to arbitration grievances that are filed during a contract's term, or a failure of the Board to create a time limit for the making of requests for information about such grievances, would result in the Union's having the right to make demands for information, and demands for arbitration, into the far distant future. There are no such contractual periods of limitation, and the Board will not retroactively engraft one on the parties' freely negotiated collective-bargaining agreement. Perhaps at some point the doctrine of laches would be said to apply; however, Respondent does not advance any objective reason[5] that laches should be invoked in this case. (Certainly, Respondent does not contend that it no longer can produce the requested information.)

The request for information for the processing of the June 8 grievance under the Master Agreement was made on August 31, a date by which Respondent had already repudiated all obligations growing out of the Master Agreement. As I find, the Union had a right to make its August 31 request for information when it did, but, at the same time, by virtue of Respondent's June 29 repudiation letter, the Union already had clear and unequivocal notice that Respondent would not respond to any subsequent requests for information. For that reason, it must be concluded that the limitations period of Section 10(b) began to run against the August 31 request for information the instant the request was mailed by the Union. Nevertheless, the charge of refusal to furnish information, as it relates to the the June 8 Master Agreement grievance, would still not run until 6 months after the August 31 request was made, or February 28. Therefore, the January 25 charge, as it relates to Respondent's refusal to furnish the information specified in the Union's August 31 request, was not barred by the limitations period of Section 10(b).

The next issue is whether the March 29 amended charge, as it relates to Respondent's refusal to entertain the June 8 grievance, supports the allegation of the complaint based on that refusal. The allegations of the amended charge, and the complaint, are supported by a charge that is timely filed within Section 10(b) if they are closely related to, and grow out of, timely filed allegations in the original charge. The Board states in *Roslyn Gardens Tenants Corp*., 294 NLRB 506, 507 (1989):

> In determining whether otherwise untimely filed allegations are barred under Section lO(b) of the Act, we examine the newly alleged violations to determine whether they are ''closely related'' to and grow out of the violations timely alleged in the charge. In applying the ''closely related'' test to those violations alleged here, we examine the following factors: (1) ''whether

[4] Ross' March 1 letter did state that Respondent would agree to arbitration, but only on bilateral submission to FMCS. Respondent does not mention that offer on brief. (By March 1, the Union's right, under the contractual provisions quoted above, unilaterally to submit the case to arbitration had matured, and the Union had invoked that right.)

[5] Respondent argues only that the Union is harrassing it.

the otherwise untimely allegations are of the same class as the violations alleged in the pending timely charge'' (i.e., whether they involve the same legal theory and usually the same section of the Act); and (2) ''whether the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the pending timely charge'' (i.e., whether they involve similar conduct, usually during the same time period, with a similar object).[5]

[5] *Redd-I*, 290 NLRB 1115, 1118 (1988). See also *NLRB v. Union Coil Co*., 201 F.2d 484, 491 (D.C. Cir. 1952), and *NLRB v. Fant Milling Co*., 360 U.S. 301, 309 (1959). The Board may also look at whether a respondent would raise the same or similar defenses to the new allegations.

It is difficult to imagine more closely related charges than one which alleges a refusal to furnish information necessary to process a grievance and a charge alleging an outright refusal to entertain the same grievance. Moreover, Respondent asserts the same defense to both charges: Respondent denies that it had any duty to respond to requests to furnish information, or requests to entertain grievances, because the requests were made after the relevant contract had expired. Accordingly, I conclude that the allegations of the complaint, that Respondent unlawfully refused to entertain the June 8 grievance, is supported by a charge that was timely filed within Section 10(b).

The January 25 charge does not refer to any refusal to entertain any grievance. Specifically, it does not refer to Respondent's refusal to entertain the June 29 grievance over a layoff, an employee placement, and alleged violations of the referral procedures. The January 25 charge alleges a refusal to furnish information, but it could not have been referring to any refusal to furnish information concerning the June 29 grievance because there was no request for information concerning that grievance until May 8. Therefore, the January 25 original charge (alleging a refusal to furnish information) does not provide a lifeline to the March 21 amendment (alleging both a refusal to furnish information and a refusal to entertain grievances) under *Redd-I*.

That being the case, the March 29 amendment regarding refusals to entertain grievances must be considered a new charge as it relates to Respondent's ignoring the June 29 grievance. The next issue is whether the March 29 ''new'' charge supports the allegations of the complaint that Respondent unlawfully refused to process the June 29 grievance.

Huddleston's January 30 letter announcing that the Union was referring the June 29 grievance (as well as the June 8 grievance) to arbitration was necessarily a second request that the June 29 grievance be entertained (the first being the filing of the grievance, itself). As noted above, there is no contractual time limit for referring a grievance to arbitration and, again, Respondent advances no objective reason for invoking laches. Each refusal of a (noncontractually untimely) request for grievance processing starts another running of the limitations period of Section 10(b). *Chesapeake & Potomac Telephone Co*., 259 NLRB 225, 230 (1981), enfd. 687 F.2d 633 (2d Cir. 1982). As I have held above, because Respondent had already repudiated all obligations growing out of the Master Agreement, the limitations period of the Act began running on the mailing of the January 30 request that the June 29 grievance be arbitrated. However, the limitations period of Section 10(b) then did not expire until July 30, 1991, and the complaint, as it relates to Respondent's refusal to process the June 29 grievance to arbitration, is supported by the March 29 ''new'' charge.

When the July 13 request for information under the Maintenance Agreement was sent by the Union (as part of the grievance itself), Respondent had not repudiated its statutory obligations relating to that agreement. Therefore, there is no argument that the limitations period of Section 10(b) should be found to have begun running as of the time that the Union made the July 13 request. Respondent did not repudiate its obligations relating to the Maintenance Agreement until September 21. Certainly, the repudiation letter of September 21 was a refusal to furnish the information requested on July 13. But there is no argument, contractual or otherwise, that the limitations period of Section 10(b) should be deemed to have begun to run against the charge of refusal to provide information necessary for the processing of the Maintenance Agreement grievance before the Respondent's September 21 repudiation of all obligations growing out of the Maintenance Agreement. This being the case, the limitations period of Section 10(b) did not expire on a charge relating to the July 13 request for information until March 21, about 3 months after the January 25 original charge (which specifically includes that allegation) was filed.

The March 21 amendment to the charge necessarily included the alleged unlawful refusal to process the July 13 grievance. Under the *Redd-I* doctrine, as discussed above, the March 21 amendment regarding the refusal to entertain the grievance was closely related to the original, timely filed, charge of unlawful refusal to furnish information. Therefore, the allegations of the complaint, that Respondent unlawfully refused to entertain the July 13 Maintenance Agreement grievance, and that Respondent refused to furnish information necessary for the processing of that grievance, are supported by the complaint.

Finally, the trial amendment to the complaint, relating to Respondent's refusal to supply information pursuant to the Union's May 8, 1991 request for information, allegedly necessary for preparation for the (unilaterally) requested arbitration of all three grievances, is supported by both the outstanding original and amended charges over Respondent's preceding refusals to furnish the same, or other, information. *NLRB v. Fant Milling Co*., 360 U.S. 301 (1959).

Accordingly, I conclude that all the allegations of the complaint, as amended at trial, are supported by charges that were filed within the limitations period of Section 10(b) of the Act.

### 2. The substantive issues

The Respondent admits that the Union made the requests for information and that it has failed to furnish the requested information. Respondent admits that the Union requested processing, including arbitration, of the grievances. Respondent denies that it had any obligation to entertain grievances, or furnish information relevant to the grievances, because both contracts had expired. Respondent further denies that it had an obligation to furnish the requested information because ''the request for information herein is overly broad, onerous, and not otherwise in accordance with the 'surviv-

ing' Section 8(a)(5) obligations imposed by the Act.''[6] The answer also denies relevance of the information requested; however, Respondent does not mention the subject of relevance on brief. I find that all the information requested, as it relates to preexpiration matters, is relevant to the grievances that were filed.

Without citing any Board[7] or court authority, Respondent makes its contention that it had no statutory obligations after the expirations of the contracts in question. In so arguing, Respondent ignores clear Supreme Court precedent that ''it could not seriously be contended'' that contract expiration would terminate the contractual obligation to arbitrate disputes based on preexpiration events. *Nolde Bros. v. Bakery Workers Local 358*, 430 U.S. 243, 251 (1977).

Further, Respondent ignores the specific authority, cited by General Counsel at the hearing, that the obligation to furnish information relevant to grievance on preexpiration events survives the contract. *Jervis B. Webb Co.*, 302 NLRB 316 (1991).

Respondent answers that the requests are broad and onerous. Respondent did not tell the Union that the requests were broad and onerous, and the contention appears to be no more than an afterthought. To the extent that the information may be voluminous, all that is necessary is for the Respondent to enter into reasonable arrangements with the Union for exchanging the requested information.[8] The requests for information are quite broad, but this factor, alone, is not a defense. Again, Respondent makes the assertion for the first, and only, time in the answer. If there had been confusion about what was requested, Respondent could easily have asked for clarifications.[9] In the posture of the case as presented, the contention of broadness, or vagueness, is simply another afterthought. Additionally, requests for information need not be couched in terms of specificity required by the ancient forms of action. The requesting party must meet only a liberal, discovery-type standard. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Under this standard, even a request to produce ''your books'' has been held not to be unduly broad. *Designcraft Jewel Industries*, 254 NLRB 791 (1981), enfd. 675 F.2d 493 (2d Cir. 1982).

Respondent contends that its refusal to process the July 13 grievance under the Maintenance Agreement cannot be held to be a violation because, as well as the 10(b) arguments stated above, the Maintenance Agreement had no life of its own and therefore expired when the underlying Master Agreement expired on June 30. In making this argument, Respondent is again arguing that it has no duty to entertain grievances which are filed after an agreement expires, even if the grievances are based on preexpiration events.

As stated above, under the authority of *Nolde* and *Jervis B. Webb*, Respondent does have an obligation to entertain timely filed grievances over preexpiration events. There is no argument that the July 13 grievance was untimely under the contracts; the contracts had no time limitations for the filing of grievances. Therefore, Respondent would have a duty to entertain the July 13 grievance, as it refers to preexpiration matters, even if the Maintenance Agreement had expired on June 30 along with the Master Agreement.

However, I find that the Maintenance Agreement had not expired by July 13. Although the Maintenance Agreement does incorporate the grievance procedure and arbitration provisions of the Master Agreement, it nowhere indicates that it would not do so if the Master Agreement were ever to expire. Moreover, Respondent's letter of June 29, repudiating all obligations under the Master Agreement, acknowledged that the Maintenance Agreement was still in effect.

Finally, Respondent argues that the Maintenance Agreement never was in effect because neither party invoked that contract for any worksite; specifically, the parties did not agree to apply the Maintenance Agreement to the site that is the subject of the July 13 grievance, the Westfield Center Clubhouse. This is a more plausible theory; however, arbitrability is an issue to be presented to an arbitrator in the first instance.[10]

In summary, I conclude that Respondent refused to furnish requested information that was necessary for the processing of grievances, and it refused to entertain grievances, in violation of Section 8(a)(5), as alleged.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that Respondent, on request, furnish the Union with the requested information, as such information may relate to preexpiration events. I shall further recommend that Respondent be ordered to participate in the demanded arbitrations, as required by the contracts that it has entered.

General Counsel acknowledges that the Respondent no longer employs any employees in any unit represented by the Union. General Counsel therefore does not request posting of the notice to employees at Respondent's facility. On apposite Board authority,[11] General Counsel does request that Respondent be ordered to mail the notice to employees to the last known addresses of all employees who were represented by the Union at the times of the June 29 and September 21 contract-repudiation letters issued by Respondent. It appearing appropriate under the circumstances, I shall make that recommendation.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

## ORDER

The Respondent, Oliver Insulating Company, Inc., Ashland, Ohio, its officers, agents, successors, and assigns, shall

[6] Answer, p. 3.

[7] The General Counsel memorandum cited by Respondent is not Board authority.

[8] *J. I. Case Co.*, 118 NLRB 520 (1957), enfd. 253 F.2d 149 (7th Cir. 1958).

[9] After all, Ross had asked Huddleston on June 28 for clarification and more information about the June 8 grievance, and Huddleston had complied; that is, the Union had demonstrated a cooperative attitude.

[10] *Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960).

[11] *Washington Star Co.*, 273 NLRB 391, 398 (1984); *Cerro CATV Devices*, 237 NLRB 1153 (1978).

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

(a) Refusing to bargain collectively with International Association of Heat and Frost Insulators and Asbestos Workers, Local 84, AFL–CIO by refusing to furnish the Union with requested information that is relevant to the processing of grievances over matters that predate the expiration of its collective-bargaining agreements with the Union.

(b) Refusing to entertain grievances and process them to arbitration, if requested.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly furnish to the Union the information specified in its requests of July 13 and August 31, 1990, and January 30 and May 8, 1991.

(b) Entertain and process to arbitration, if requested, the Union's grievances of June 8 and 29 and July 13, 1990.

(c) Mail to each employee represented by the Union on June 29 or September 21, 1990, at each employee's last known home address, a copy of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be immediately mailed to the employees as designated above. Five additional signed copies shall be provided to the Union for posting at its offices and meeting places, if it desires.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to abide by this notice, a copy of which the National Labor Relations Board has also ordered us to mail to you.

WE WILL NOT refuse to bargain collectively with International Association of Heat and Frost Insulators and Asbestos Workers, Local 84, AFL–CIO by refusing to furnish the Union with requested information that is relevant to the the processing of grievances over matters that predate the expiration of our collective-bargaining agreements with the Union.

WE WILL NOT refuse to entertain grievances and process them to arbitration, if requested.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL promptly furnish to the Union the information specified in its requests of July 13 and August 31, 1990, and January 30 and May 8, 1991.

WE WILL entertain and process to arbitration, if requested, the Union's grievances of June 8 and 29 and July 13, 1990.

OLIVER INSULATING COMPANY, INC.